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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE PACIFIC FERTILITY CENTER
LITIGATION

This Document Relates to:
Case No. 3:18-cv-01586
(A.B., C.D., E.F., G.H., and I.J.)

Case No. 3:18-cv-01586-JSC

**DEFENDANT'S RESPONSE TO
PLAINTIFFS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

N.D. Cal. Local Rules 7-11 and 79-5

Judge: Hon. Jacqueline Scott Corley

No Hearing Set Pursuant to L.R. 7-11(c)

TO THE COURT, THE PARTIES, AND ALL COUNSEL FOR RECORD:

PLEASE TAKE NOTICE that Chart Inc. will and does hereby move the Court, pursuant to Civil Local Rule 79-5, for an administrative order to file the following documents or portions thereof under seal:

- Portions of Plaintiffs' Motion to Exclude Expert Testimony;
- Certain exhibits to the Declaration of Amy M. Zeman in Support of Plaintiffs' Motion to Exclude Expert Testimony, including
 - Exhibit 1 – Expert Report of Eldon Leaphart dated November 6, 2020;
 - Exhibit 2 – Excerpts from the November 18, 2020 deposition of Eldon Leaphart;
 - Exhibit 3 – Expert Report of John Cauthen dated November 6, 2020;
 - Exhibit 4 – Excerpts from the November 24, 2020 Deposition of John Cauthen;
 - Exhibit 7 – Supplemental Report of Franklin Miller dated November 20, 2020;
 - Exhibit 8 – Excerpts from the December 1, 2020 Franklin Miller deposition; and
 - Exhibit 9 – Second Rebuttal Report of Franklin Miller dated December 11, 2020.
- Portions of Plaintiffs' Proposed Order to Exclude Expert Testimony.

Defendant files this response to Plaintiffs' Administrative Motion to File Under Seal (ECF No. 630) to comply with the Second Amended Stipulated Protective Order (EFC No. 596) and Civil Local Rule 79-5(e)(1) and 79-5(d)(1)(A). Pursuant to Civil Local Rules 79-5 and 7-11(c), no hearing date has been set.

Material to be Filed Under Seal

Paragraph 12.3 of the Second Amended Stipulated Protective Order prohibits a party from filing in the public record any disclosure or discovery material that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (“Protected Material”) without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons. Protected Material includes portions of pleadings that contain, summarize, or reflect the Protected Material. ECF No. 598 at ¶ 12.3.

Plaintiff’s Administrative Motion to File Under Seal (ECF No. 630). Plaintiffs’ administrative motion identifies certain portions of their Motion to Exclude Expert Testimony (ECF No. 630-3) and the Proposed Order to Exclude Expert Testimony (ECF No. 630-18) as quoting, referencing, or otherwise relying on documents designated by Chart as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the Second Amended Stipulated Protective Order. Plaintiffs also identify Exhibits 1 through 11 to the Zeman Declaration (ECF No. 630-5 to 630-15) as documents Chart designated in full as entirely confidential or highly confidential under the protective order.

Materials Designated by Chart. In response to Plaintiffs’ motion, Chart submits revised confidentiality designations narrowly tailored to cover only Chart’s business operations, processes, and functions. The revised designations are set forth in the Declaration of Kevin M. Ringel in Support of Chart’s Response to Plaintiffs’ Motion to Exclude. Courts have routinely recognized the need to protect from disclosure confidential business information like the information sought to be sealed here. *See, e.g., Huawei Techs., Co., Ltd. v. Samsung Elecs. Co., Ltd.*, 2017 WL 1508756, at *1 n.1 (N.D. Cal. Apr. 27, 2017) (granting party’s administrative motion to file under seal confidential business information, including internal meeting minutes and excerpts from the

1 party's opposition motion); *Karl Storz Endoscopy-Am., Inc. v. Stryker Corp.*, 2014 WL 12700984,
2 at *1 n.1 (N.D. Cal. Oct. 3, 2014) (granting defendant corporation's administrative motion to file
3 under seal document containing sensitive business information).

4 Moreover, disclosure of such commercially sensitive business information would allow
5 potential competitors to gain insight into how Chart conducts its operations and business
6 relationships such that its business could be significantly and irreparably harmed. In such
7 circumstances, courts have granted a party's request to file such information under seal. *See, e.g.*,
8 *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (ordering sealing where documents
9 could be used "as sources of business information that might harm a litigant's competitive
10 standing") (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)); *Contreras v.*
11 *Portfolio Recovery Assocs., LLC*, 2017 WL 2964012, at *6 (N.D. Cal. Jul. 12, 2017) (holding that
12 the release of documents that might harm defendant's competitive business strategy constituted a
13 compelling reason to file such documents under seal). Chart's request to seal the above-identified
14 documents is narrowly tailored to only those portions that merit sealing.

15 Chart moves to file the designated materials under seal pursuant to paragraph 12.2 of the
16 Second Amended Stipulated Protective Order and Local Rules 7-11 and 79-5.

17 Pursuant to Civil Local Rule 79-5(d)(1), the following attachments accompany this motion:

- 18 1. The Declaration of Kevin M. Ringel in Support of Chart's Response to Plaintiffs'
19 Administrative Motion to Seal Motion to Exclude; and
20 2. A proposed order that lists each document and portion thereof sought to be sealed.

21 Dated: January 8, 2021.

22 Respectfully submitted,

23 By: /s/ Kevin M. Ringel

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2021, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system.

Dated: January 8, 2021.

Respectfully submitted,

By: /s/ Margaret. C. Redshaw

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